

TESTIMONY OF DR. MOLLIE H. BOWERS, ASSOCIATE PROFESSOR,
UNIVERSITY OF BALTIMORE, AND ARBITRATOR, BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND
CIVIL SERVICE OF THE SENATE GOVERNMENT AFFAIRS
COMMITTEE

March 18, 1988

Mr. Chairman, Members of the Committee and Staff, distinguished guests, I am Dr. Mollie H. Bowers, Associate Professor, Robert G. Merrick School of Business, University of Baltimore, and member of the National Academy of Arbitrators. I appreciate the opportunity to appear before you today and to share information with you as you deliberate legislation to establish leave banks or leave sharing programs for the Federal service.

Your foresight and efforts are to be commended in addressing the challenging and complex issues associated with such legislation. This is not a frivolous compliment. Both of the bills you are considering are unique in that they lead rather than follow employee relations policy with respect to leave in the private sector and most of the public sector. Furthermore, where policy concerning leave banks or leave sharing has been established by certain states, such as Maryland, Connecticut, Washington state and Alaska, the experience is too new to have been thoroughly and objectively studied and conclusive results obtained. Consequently, my testimony draws its essence from the years of experience I have had in Federal, public and private sector labor relations.

Clearly, the premise upon which both bills are based is sound. That is, a reasonable need exists in the Federal service

to relax prevailing policy so that bona fide employee requests for extended and often unanticipated medical leave can be met. This need is demonstrated not only by the AIDS crisis, but also by the growing concern about the methods and means of responding to other catastrophic illnesses as well as to the increasingly pressing burdens of both elder and child care. The recently published regulations from the Office of Personnel Management (OPM) partially address these needs by making it possible for agencies government-wide to respond to needs for leave sharing. This is only the tip of the iceberg, however.

In my judgment, the most fundamental issue that this Subcommittee must consider is the extent to which any legislation should go farther than establishing that either leave banks or leave sharing shall be the policy government-wide. My recommendation is that this should be the extent of any legislation so that, in unionized settings, the impact and implementation of the policy would be left to labor and management to determine at the bargaining table and, in nonunion settings, by the agency. I understand that in making this recommendation, I am opting to sacrifice the application of such policy on a fair, consistent and equitable basis government-wide. It is my belief, however, that this sacrifice is not only warranted, but also essential to best meet the widely divergent needs and characteristics of both agencies and employees in the Federal service.

Two examples may help to illustrate the validity of this argument. First, assume an agency location in which the preponderance of the work force is comprised of females. Whether a leave bank or a leave donation scheme prevails, the fact is and is likely to remain so for the foreseeable future that more women than men will have primary responsibility for care of both young and old dependents. Thus, females will tend to have a disproportionate need to draw upon extended leave reserves. In order to best accommodate the needs that arise, therefore, it may be reasonable and necessary under such circumstances to establish a limit on the amount of leave that can be taken and/or to require that leave be donated for a specified period of time prior to being eligible to draw on the reserve available.

Second, assume an agency location where most of the occupations are at a low GS level, where there is a high rate of turnover and where some employees do eventually progress to fairly high GS levels. Consider what would happen to the financial accounting system for that location or agency if most of the employees contributing leave were paid at a low GS level and most of those drawing upon leave were at a high level. Obviously, that location or agency could lose money given this configuration of the work force but the opposite is also possible if this configuration were reversed. The bottom line is that labor and management or the relevant agency head is in the best position to determine how extended leave opportunities can be

implemented most successfully in terms of the needs of the employees and the efficiency of the service.

As an introduction to consideration of specific policy alternatives for providing extended leave, I agree with OPM that under no circumstances should sick leave be used for such programs on either a voluntary or a use-or-lose basis. If unused sick leave or a portion thereof was donated or rolled over into an extended leave program, this could provide an incentive for some employees to use their sick leave whether or not they had a bona fide need to do so. The potentially negative implications in terms of the economy and efficiency of the Federal service is obvious. Moreover, unused sick leave counts toward retirement in the Federal service so that an employee may incur double jeopardy from such a scheme.

The direct employee donation approach to extended medical leave will now be addressed. A positive element of such an approach can be to condition entitlement to benefits upon donations received from each individual. This places the responsibility to plan for the contingency that extended leave may be needed at some future time squarely upon the shoulders of employees. It is not entirely clear, however, that this approach would necessarily be responsive to the general need that has spawned this legislative debate. Specifically, what, if anything, would be done in the case of a relatively short-term employee who has donated time but simply has not been with an agency long enough to accumulate sufficient benefits to cover an

extended medical leave? If the answer is 'nothing', than a significant portion of the work force in a given location, agency or even government-wide may have no greater protection in the event of an extended medical leave situation than he/she does now.

This potential problem is also not resolved if a provision is added enabling employees to voluntarily donate time to their co-workers. While each of us might be moved in theory by the plea for help in a given circumstance, the possibility exists in practice that insufficient leave might be volunteered depending upon the reason given (for example, an AIDS case) and/or the propensity of the recipient to have chronically used all of his/her sick leave prior to the event in question. Co-workers in this situation may react primarily to the past abuse rather than to the current emergency. Historically, workers have demonstrated a willingness to band together through labor unions, credit unions and organizations like the Knights of Columbus. Today, however, it is less evident that individuals can be predictably counted on to give away a benefit they have earned to someone who has not. Regardless of which scenario might obtain, the opportunities are abundant for disparate treatment with or without just cause and, hence, for amplification of employee relations problems impacting upon the efficiency of the Federal service.

These same limitations may arise where leave banks are concerned especially if the particulars are imposed by

legislation rather than shaped by negotiations or some other form of employee participation. One area where controversy can be eliminated ahead of time is to require that leave banks for employees be separated from those for supervisors. By so doing, the potential for coercion can be thwarted as well as any problems, real or perceived, that may be associated with disproportionate use of a leave bank by employees vis-a-vis their supervisors or vice versa.

There are, however, a number of other critical questions associated with leave bank policies. For example, if the donation of time is not voluntary (e.g., state of Maryland), and, instead, some portion or all of use-or-lose leave is invested, will this unnecessarily encourage employees to use more leave? At this juncture, there does not appear to be a large enough body of experience to answer this question.

It is unlikely, moreover, that every meritorious reason for drawing leave from a bank can be anticipated and codified ahead of time. As a result, some language governing access to the bank will have to remain vague. This gives rise to the questions of who shall decide whether or not access will be granted in certain cases and what criteria shall be used to make this decision? Popular in today's litany of possible answers is some form of employee participation such as a labor-management committee. While this may well be the answer, it is worthwhile to note that another level of bureaucracy may be created in the process. A decision would also have to be made concerning the composition of

such a committee and, if employees and management are represented in equal numbers, how shall a tie-breaker be achieved. The mechanics may tend to become even more cumbersome from here since, in unionized settings, such decisions may be appealable through the grievance procedure. Clearly, it would be impracticable to wait for the outcome in arbitration to decide the appropriateness of need in a case claimed to be a catastrophic illness!

Finally, regardless of whether a leave bank is established on the basis of voluntary or mandatory donations of time, administrators must be ever mindful of the varying cost of the hours accumulated in relation to the seniority of the affected employees and of the users. As stated earlier, this may give rise to a positive or negative cash flow at any given time that is likely to be difficult to predict for budgetary purposes. This problem could be magnified further by legislating or negotiating the right of employees to vest and make portable their leave bank entitlement accrued in one agency if they move to another agency within the Federal service or from the employee to the management ranks in a given agency.

I have responded to the Committee's interest in obtaining insight into the nuances of administering leave bank and leave sharing programs. It should be evident from my remarks that the legislation before you has many complex implications the consequences of which are largely uncharted at this time. Nothing contained in this testimony, however, is intended to

dissuade you from leading the nation in this most critical area of leave policy.

Thank you for providing me with the opportunity to address this body. I shall be happy to entertain any questions you may have and to provide answers to the extent of my knowledge.